IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6904 of 1989
to
SPECIAL CIVIL APPLICATION No 6907 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMNAGAR DIST CENTRAL CO OP BANK LTD

Versus

GIRISHBHAI SHAH OR SUCCESSOR

Appearance:
MS BK VAKHARIA for Petitioner
MR BD DESAI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In these petitions under Article 226 of the Constitution, four District Central Co-operative Banks for the Districts Jamnagar, Junagadh, Baroda and Bharuch have challenged the circular dated 27.6.1989 issued by the Registrar of Co-operative Societies, Gujarat State.

2. It appears that in order to meet with the drought situation which was then prevailing, the State Government had come out with a scheme known as rehabilitation scheme

for scarcity affected farmers who were not able to get advances from the Co-operative societies and the banks on account of non-repayment of advances taken earlier within the prescribed time limit. The scheme was floated as per the Government Resolution dated 16.2.1982 at Annexure "B" to the petitions. The formula worked out was that the loans which were earlier required to be repaid by the farmers within a period of 5 years should be repaid within 10 to 12 years at lower rate of interest and without any penal interest. In order to enable the District Central Co-operative Banks to implement the policy contained in the scheme, the State Government had in turn decided to give loans to the District Central Co-operative Banks at the interest rate of 6% per annum. However, subsequently the State Government decided to permit such District Central Co-operative Banks to borrow the amounts from outside and the Government agreed to pay differential rate of interest i.e. the rate of interest at which the concerned banks had to borrow the amounts as reduced by 6%. By the impugned circular dated 27.6.1989 the Registrar of Co-operative Societies, Gujarat State directed the District Central Co-operative Banks to reflect only the differential interest in their balance sheets and not to mention that any amount was due and payable by the State Government to such banks. It is the aforesaid circular which is under challenge in these petitions.

3. It appears to the Court that the petitions do not deserve to be entertained for the following reasons :-

(i) In the first place, the banks have stated in the memo of the petitions that they intended to file Civil Suits for recovery of amounts from the State Government. Nothing is produced on the record to show that any such suit is filed. The very fact that the petitioner banks considered that it was necessary for them to file Civil Suits for recovering the alleged amounts from the State Government clearly indicates that even according to the petitioners their so called recovery from the State Government was required to be adjudicated. Hence, this Court is not inclined to entertain the petitions which for all practical purposes raise the same contentions as would be required to be raised in the Civil Suits.

(ii) In view of the averments made in the affidavit in reply, it is clear that the State Government had reviewed the scheme of giving soft loans at 6%

interest. The said scheme was reviewed and it was decided by the Government that instead of giving loan, the Government would give interest subsidy by paying the differential amount of interest i.e. between the rate of interest at which the Banks would make borrowings and 6% interest. The Registrar of Co-operative Societies found that inspite of the aforesaid change in the scheme, some of the District Co-operative Banks continued to show in the balance sheets as if the amounts were due from the State Government for the principal amount. This would affect and inflate the credit of the banks which would lead to incorrect financial position. The NABARD had also drawn the attention about the artificial inflation in the books of accounts shown by the District Co-operative Banks and, therefore, the Registrar issued the impugned circular. Some of the banks had also accepted the position and rectified their position accordingly.

4. In view of the aforesaid explanation coming from the respondents, it cannot be said that the impugned circular suffers from any vice of arbitrariness or illegality.

The petitions are, therefore, dismissed. Rule is discharged.

May 5, 2000 (M.S. Shah, J.)
sundar/-